

Application No. 10/750,253
Amendment dated May 1, 2006
Reply to Office Action of February 2, 2006

REMARKS

Claims 1-45 are presented for Examiner Evans' consideration.

Pursuant to 37 C.F.R. § 1.111, reconsideration of the present application in view of the following arguments is respectfully requested.

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ARGUMENTS

By way of the Office Action mailed February 2, 2006, claims 1, 4-5, 7-14, 17, 20-21, 23-29, 32, 35-36 and 38-42 stand rejected under 35 U.S.C. § 102 as allegedly being anticipated and thus unpatentable over U.S. Patent Number 5,817,086 to Kling (*Kling*). This rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegall Bros. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631 (Fed. Cir. 1987); M.P.E.P. § 2131. In addition, "[t]he elements must be arranged as required by the claim." M.P.E.P. § 2131 referencing *In re Bond*, 910 F.2d 831 (Fed. Cir. 1990); see also *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989). Also, "[t]he identical invention must be shown in as complete detail as is contained in the . . . claim." M.P.E.P. § 2131 (citing *Richardson*, 868 F.2d at 1236 (Fed. Cir. 1989)).

1. *Kling* fails to anticipate Applicants' claim 1 because the absorbent assembly of *Kling* does not include a topsheet layer and barrier layer having lateral extensions that are C-folded or Z-folded.

Applicants' claim 1 requires, in part,

an absorbent assembly attached to the exterior surface of the elastic inner layer, wherein the absorbent assembly includes a topsheet layer, a core layer and a barrier layer, and wherein the topsheet layer and barrier layer have lateral extensions that are C-folded or Z-folded.

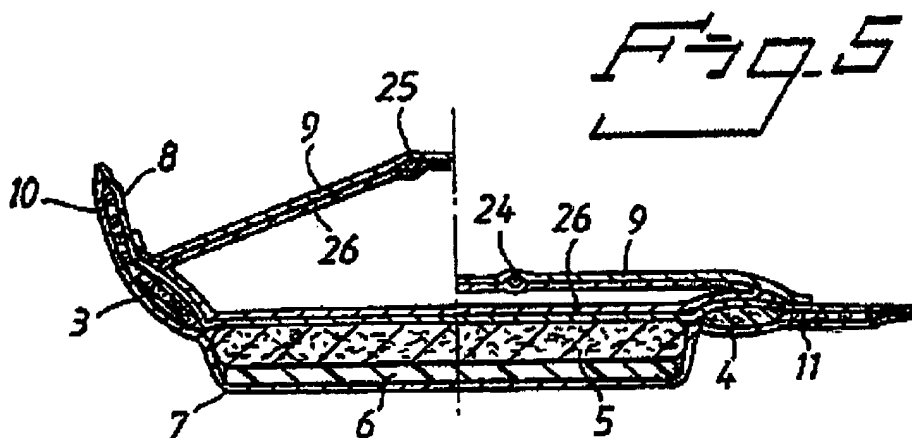
This element is not found in *Kling* and the Examiner looks to *Widlund* (WO 95/25493) for this element. The Examiner states that *Kling* "incorporates" *Widlund* into his disclosure. Applicants' respectfully note that *Kling* is discussing the "dividing wall 432" when stating, "For more details and advantages of this embodiment, reference is made to our Swedish Patent Application 9400916-4 filed on 18 Mar. 1994." (col. 8: ll. 57-59). Therefore, *Kling* does not "incorporate" *Widlund* for details of the absorbent assembly, but instead "references" *Widlund* for details and advantages of the dividing wall 432.

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Even assuming, *arguendo*, that *Kling* did "incorporate" *Widlund*, *Widlund* does not reveal a C-fold lateral extension of the absorbent assembly in Figure 5 as asserted by the Examiner. Figure 5 of *Widlund* is reproduced below:



For context, Figure 5 of *Widlund* is a "cross-sectional view taken on the line V-V in Figure 2." (*Widlund*, page 3, lines 25-26). Figure 5 illustrates a "left part" in the absence of a load and a "right part" showing the flattened state. (page 8, lines 14-20). In other words, Figure 5 illustrates a "split" in the article to represent the cross-sectional view under different conditions.

Careful examination of *Widlund*, particularly as to Figure 5, reveals that an absorbent body 1 comprising a main body 2 (comprised of upper sheet 5 and bottom sheet 6) and two side bodies 3 and 4 are enclosed between an outer casing sheet 7 and an inner casing sheet 8. The casing sheets 7 and 8 are joined at parts which lie outside the absorbent body 1. A top sheet 9 is fastened along the diaper edge parts. (page 3, line 35 through page 4, line 33). A tubular body 26 is attached in a flattened state between the top sheet 9 and the inner casing sheet 8. (page 7, lines 8-16).

Assuming that the outer casing 7 of *Widlund* is analogous to the barrier layer of Applicants claim 1 and the inner casing layer 8 of *Widlund* is analogous to the topsheet layer of Applicants claim 1, *Widlund* does not teach a topsheet layer and a barrier layer having lateral extensions that are C-folded or Z-folded and therefore does not set forth each and every element, either expressly or inherently, of Applicants' claim 1. Applicants

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respectfully direct the Examiner's attention to Applicants' Figures 2, 6, 6A, 7, 8 and 10 for illustrations of exemplary C-folds and Z-folds.

Therefore, the rejection as to claim 1 should be withdrawn. Likewise, claims 4-5 and 7-14 depend from claim 1 and are patentably distinct over *Kling* for at least the same reason as claim 1 discussed above. Therefore, the rejections as to these claims should also be withdrawn.

2. *Kling* fails to anticipate Applicants' claim 17 because *Kling* does not teach, either expressly or inherently, a front ear portion and a back ear portion bonded to each longitudinal side edge.

Applicants' claim 17 requires, in part,

a front ear portion bonded to each longitudinal side edge in the front waist region . . . [and] a back ear portion bonded to each longitudinal side edge in the back waist region

Neither of these elements is found in *Kling*. The Examiner states that "*Kling* has a front and rear region (Figure 1, 12 and 13) with ear portions, which ear portions are defined as extensions of the side, on each side...."

Applicants respectfully disagree. 'Extensions of the side' are not ear portions bonded to each longitudinal side edge as required by claim 17 and described in the specification at page 18, lines 9-17, which states,

The material forming the mechanical fasteners 130 and 140 may be integral with the elastic inner layer 20 (and the outer layer 80 when the garment 100 includes an outer layer 80) or **the material may be provided on separate portions** (e.g. front ear portion 33 and back ear portion 43) that are attached to the longitudinal side edges 55 of the garments 100 in the waist regions. In Figs. 1- 5, the mechanical fasteners 130 and 140 **are provided on separate portions** that are attached to the garment 100 near the longitudinal side edges 55. (emphasis added).

Therefore, *Kling* fails to teach each and every element of claim 17 and the rejection should be withdrawn. Likewise, claims 20-21 and 23-29 depend from claim 17 and are patentably distinct over *Kling* for at least the same reason as claim 17 discussed above. Therefore, the rejections as to these claims should also be withdrawn.

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3. *Kling* fails to anticipate Applicants' claim 32 because *Kling* does not teach a front waist region comprising a fastener adapted to engage into the elastic inner layer of the garment in the back waist region and a back waist region comprising a fastener adapted to engage into the outer layer of the garment in the front waist region.

Applicants' claim 32 states, in part,

wherein the elastic inner layer has an interior surface and an exterior surface, wherein the front waist region comprises a fastener located laterally inward of each longitudinal side edge and adapted to engage into the elastic inner layer of the garment in the back waist region; and wherein the back waist region comprises a fastener located laterally inward of each longitudinal side edge and adapted to engage into an outer layer of the garment in the front waist region....

These elements are not taught in *Kling*. The Examiner states that, "*Kling* teaches that the receiving areas can be located on either the top or bottom layers therefore the fastening system is interchangeable." (Office Action at page 5).

This is irrelevant because *Kling* does not teach both a fastener in the front waist region adapted to engage into the elastic inner layer of the garment in the back waist region and a fastener in the back adapted to engage into an outer layer of the garment in the front waist region as required by Claim 32.

Therefore, the rejection as to claim 32 should be withdrawn. Likewise, claims 35-36 and 38-42 depend from claim 32 and are patentably distinct over *Kling* for at least the same reason as claim 32 discussed above. Therefore, the rejections as to these claims should also be withdrawn.

By way of the Office Action mailed February 2, 2006, claims 2-3, 6, 18-19, 22, 33-34 and 37 stand rejected under 35 U.S.C. § 103 as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over U.S. Patent Number 5,817,086 to Kling (*Kling*) in view of U.S. Patent Number 6,570,056 to Tanzer (*Tanzer*). This rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

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To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references must teach or suggest all the claim limitations. M.P.E.P. § 2142, 2143.

1. The combination of *Kling* and *Tanzer* does not render Applicants' claims obvious because there is no suggestion or motivation, in either *Kling* or *Tanzer*, that would lead one of skill in the art to combine the references.

The Examiner states that, "It would have been obvious...to modify *Kling*'s absorbent article with selectable stretching regions as taught by *Tanzer*, to ensure a flexible and comfortable fit of the absorbent article on the wearer." (emphasis added). However, the Examiner has not directed Applicants to any specific language supporting such an assertion. The motivation related to "comfort" appears to be prohibited post hoc rationalization to justify the combination. However, *Kling* already purports to teach a top layer that is flexible (abstract) and soft (col. 3: line 57). Therefore, it is not clear why one skilled in the art would be led to this combination. The purported motivation does not meet the Examiner's burden of establishing a *prima facie* case of obviousness.

2. The combination of *Kling* and *Tanzer* does not render Applicants' claims obvious because there is no reasonable expectation of success.

There is no indication that a selectively stretchable elastic layer of *Tanzer* would function with *Kling*. *Kling* appears to orient the majority of elastic elements in the longitudinal direction to function with the tongue and opening. The end regions of *Tanzer* are stretchable in the lateral direction. Therefore, combining *Tanzer* with *Kling* would seem to create stretchability in a direction opposite of that sought by *Kling*. The Examiner has not provided any teaching to indicate that such a combination would have a reasonable expectation of success as required to make a valid *prima facie* case of obviousness.

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3. The combination of *Kling* and *Tanzer* does not render Applicants' claims obvious because neither *Kling* nor *Tanzer*, alone or in combination, teaches or suggests an absorbent assembly having a topsheet layer and a barrier layer having extensions that are C-folded or Z-folded.

As discussed above, *Kling* fails to teach or suggest an absorbent assembly having a topsheet layer and a barrier layer having extensions that are C-folded or Z-folded as required by Applicants' claim 1.

Tanzer does not teach or suggest an absorbent assembly having a topsheet layer and a barrier layer having extensions that are C-folded or Z-folded. Therefore, the addition of *Tanzer* does not cure the defects of *Kling* and the combination of *Kling* and *Tanzer* fails to teach or suggest all the limitations of claim 1.

As such, the combination fails to render Applicants' claim 1 obvious and the rejection should be withdrawn. Claims 2-3 and 6 depend from claim 1 and are non-obvious for at least the same reason. The rejection as to these claims should also be withdrawn.

4. The combination of *Kling* and *Tanzer* does not render Applicants' claims obvious because neither *Kling* nor *Tanzer*, alone or in combination, teaches or suggests a front ear portion and a back ear portion bonded to each longitudinal side edge.

As discussed above, *Kling* fails to teach or suggest a front ear portion and a back ear portion bonded to each longitudinal side edge as required by Applicants' claim 17.

Tanzer does not teach or suggest a front ear portion and a back ear portion bonded to each longitudinal side edge. Therefore, the addition of *Tanzer* does not cure the defects of *Kling* and the combination of *Kling* and *Tanzer* fails to teach or suggest all the limitations of claim 17.

As such, the combination fails to render Applicants' claim 17 obvious and the rejection should be withdrawn. Claims 18-19 and 22 depend from claim 17 and are non-obvious for at least the same reason. The rejection as to these claims should also be withdrawn.

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5. The combination of *Kling* and *Tanzer* does not render Applicants' claims obvious because neither *Kling* nor *Tanzer*, alone or in combination, teaches or suggests a front waist region comprising a fastener adapted to engage into the elastic inner layer of the garment in the back waist region and a back waist region comprising a fastener adapted to engage into the outer layer of the garment in the front waist region.

As discussed above, *Kling* fails teach or suggest a front waist region comprising a fastener adapted to engage into the elastic inner layer of the garment in the back waist region and a back waist region comprising a fastener adapted to engage into the outer layer of the garment in the front waist region as required by Applicants' claim 32.

Tanzer does not teach or suggest a front waist region comprising a fastener adapted to engage into the elastic inner layer of the garment in the back waist region and a back waist region comprising a fastener adapted to engage into the outer layer of the garment in the front waist region. Therefore, the addition of *Tanzer* does not cure the defects of *Kling* and the combination of *Kling* and *Tanzer* fails to teach or suggest all the limitations of claim 32.

As such, the combination fails to render Applicants' claim 32 obvious and the rejection should be withdrawn. Claims 33-34 and 37 depend from claim 32 and are non-obvious for at least the same reason. The rejection as to these claims should also be withdrawn.

By way of the Office Action mailed February 2, 2006, claims 15-16, 30-31 and 43-45 stand rejected under 35 U.S.C. § 103 as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over U.S. Patent Number 5,817,086 to Kling (*Kling*) in view of U.S. Patent Number 6,570,056 to Tanzer (*Tanzer*) and further in view of EP 1 201 212 to Muller et al. (*Muller*). This rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

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The Examiner fails to provide any suggestion or motivation as to why one skilled in the art would combine *Muller* with *Kling* and *Tanzer*. The Examiner states that it would have been obvious "to modify *Kling* in view of *Tanzer* by providing an elastic waist band in the middle region of the longitudinal edge with a length of 11 cm and attachment regions of 2.5 cm to *provide a comfortable, but secure fit around the wearer.*" (emphasis added). This is merely a conclusory statement with no substantiation provided. Merely restating a purported benefit, i.e., 'a comfortable, but secure fit around the wearer' does not meet the burden required to establish a *prima facie* case of obviousness.

Even assuming, *arguendo*, that it was proper to combine *Kling*, *Tanzer* and *Muller*, the combination fails to teach or suggest all the claim limitations and therefore no *prima facie* case of obviousness has been made.

As discussed above, the combination of *Kling* and *Tanzer* fails to teach or suggest an absorbent assembly having a topsheet layer and a barrier layer having extensions that are C-folded or Z-folded as required by Applicants' claim 1. *Muller* does not teach or suggest an absorbent assembly having a topsheet layer and a barrier layer having extensions that are C-folded or Z-folded. Therefore, the addition of *Muller* does not cure the defects of *Kling* and *Tanzer*. As such, the combination fails to render Applicants' claim 1 obvious. Claims 15-16 depend from claim 1 and are non-obvious for at least the same reason. The rejection as to these claims should be withdrawn.

Also as discussed above, the combination of *Kling* and *Tanzer* fails to teach or suggest a front ear portion and a back ear portion **bonded** to each longitudinal side edge as required by Applicants' claims 17 and 45. *Muller* does not teach or suggest a front ear portion and a back ear portion bonded to each longitudinal side edge. Therefore, the addition of *Muller* does not cure the defects of *Kling* and *Tanzer*. As such, the combination of *Kling*, *Tanzer*, and *Muller* fails to teach or suggest all the limitations of claims 17 and 45 and therefore fails to render Applicants' claims 17 and 45 obvious. The rejection as to claim 45 should be withdrawn. Claims 30-31 depend from claim 17 and are non-obvious for at least the same reason. The rejection as to these claims should also be withdrawn.

Also as discussed above, the combination of *Kling* and *Tanzer* fails to teach or suggest a front waist region comprising a fastener adapted to engage into the elastic inner

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the garment in the back waist region and a back waist region comprising a fastener adapted to engage into the outer layer of the garment in the front waist region as required by Applicants' claim 32. The addition of *Muller* does not cure this defect. Therefore, the combination of *Kling*, *Tanzer* and *Muller* fails to teach or suggest all the limitations of claim 32. As such, the combination fails to render Applicants' claim 32 obvious. Claims 43-44 depend from claim 32 and are non-obvious for at least the same reason. The rejection as to these claims should be withdrawn.

For at least the reasons stated above, it is respectfully submitted that all of the presently presented claims are in form for allowance.

Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

The undersigned may be reached at: (920) 721-3016.

Respectfully submitted,

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